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Act on Employee Involvement in European Companies (SE) (758/2004)

Chapter 1 – General provisions

Section 1 – Objectives

The purpose of this Act is to provide for the arrangement of employee involvement in European companies. Employee involvement shall primarily be arranged by means of negotiation and agreement in accordance with Chapters 3 and 4 of this Act or, where an agreement is not reached, in accordance with the standard rules laid down in Chapter 5 of this Act.

Section 2 – Scope of application

This Act applies to the arrangement of employee involvement in European companies registered in Finland. However, the provisions of this Act concerning the allocation of seats on special negotiating bodies and representative bodies in Finland and concerning the election of members representing employees on special negotiating bodies, representative bodies and the administrative or supervisory organs of European companies in Finland shall apply regardless of which Member State of the European Economic Area the company is registered in.

Section 3 – Definitions

For the purposes of this Act:

- 1) *European company (Societas Europaea)*, hereinafter referred to as ‘SE’ means a company established in accordance with Council Regulation (EC) No 2157/2001 on the Statute for a European company (SE);
- 2) *participating companies* means the companies directly participating in the establishing of an SE;
- 3) *subsidiary of a company* means an undertaking over which that company exercises dominant influence defined in accordance with Article 3(2) to (7) of Council Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purpose of informing and consulting employees;
- 4) *concerned subsidiary or establishment* means a subsidiary or establishment of a participating company which is proposed to become a subsidiary or establishment of the SE upon its formation;
- 5) *employees’ representatives* means the employees’ representatives provided for by national law or practice;

- 6) *representative body* means the body representative of the employees set up by an agreement referred to in Chapter 4 of this Act or established in accordance with Chapter 5, with the purpose of informing and consulting the employees of an SE and its subsidiaries and establishments situated in the European Economic Area and, where applicable, of exercising participation rights in relation to the SE;
- 7) *special negotiating body* means the body established in accordance with Chapter 2 of this Act to negotiate with the competent organ of the participating companies regarding the establishment of arrangements for employee involvement within the SE;
- 8) *involvement of employees* means any mechanism, including information, consultation and participation, through which employees' representatives can exercise an influence on decisions to be taken within the SE;
- 9) *information* means the informing of the body representative of the employees or employees' representatives by the competent organ of the SE on questions which concern the SE itself or any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State, at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact, and, where appropriate, prepare employee consultations to be carried out with the competent organ of the SE;
- 10) *consultation* means the establishment of dialogue between the body representative of the employees or the employees' representatives and the competent organ of the SE, at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SE; and
- 11) *participation* means the influence of the body representative of the employees or the employees' representatives in the affairs of a company by way of the right to elect or appoint some of the members of the company's supervisory or administrative organ or such management groups or equivalent bodies which together cover the company's profit units, or the right to recommend or oppose the appointment of some or all of the members of the company's supervisory or administrative organ.

Chapter 2 – Creation of a special negotiating body

Section 4 – *Actions by participating companies and creation of a special negotiating body*

- (1) Where the management or administrative organs of the participating companies draw up a plan for the establishment of an SE, they shall as soon as possible after publishing the merger proposals or the proposals for creating a holding company or after agreeing a plan to form a subsidiary or to transform into an SE, take the necessary steps, including providing information about participating companies and concerned subsidiaries and establishments and the number of their employees, to start negotiations with the representatives of the companies' employees' on arrangements for the involvement of employees in the SE.
- (2) For the purpose of these negotiations, a special negotiating body shall be formed representing the employees of the participating companies and the concerned subsidiaries and establishments.

Section 5 – Allocation of seats on the special negotiating body among Member States

The members of the special negotiating body shall be elected or appointed in proportion to the number of employees employed in each Member State by the participating companies and concerned subsidiaries and establishments. For each Member State, one seat shall be allocated per amount of employees employed in that Member State equal to 10 per cent, or part thereof, of the number of employees employed by the participating companies and concerned subsidiaries and establishments in all Member States.

Section 6 – Allocation of additional seats in a merger situation

- (1) In the case of an SE formed by way of merger, the necessary number of additional members shall be elected for the special negotiating body from each Member State so that the negotiating body includes at least one member representing each participating company which is registered and has employees in that Member State and which it is proposed will cease to exist as a separate legal entity following the registration of the SE. The number of additional seats shall not exceed 20 per cent of the number of representatives elected or appointed by virtue of section 5.
- (2) However, the procedure referred to in subsection 1 shall not lead to certain employees having double representation in the special negotiating body.
- (3) If the number of companies referred to in subsection 1 is greater than the number of additional seats available, these additional seats shall be allocated to companies in different Member States by decreasing order of the number of employees they employ.

Section 7 – Allocation of seats among Finnish companies

- (1) If the number of seats on a special negotiating body allocated to Finnish participating companies in accordance with section 5 is less than or equal to the number of participating companies, these seats shall be allocated among Finnish companies one at a time by decreasing order of the number of employees they employ.

- (2) If the number of seats on a special negotiating body allocated to Finnish participating companies in accordance with section 5 is greater than the number of participating companies, one seat shall be allocated first to each Finnish company, and thereafter the remaining seats among the companies in proportion to the number of employees they employ.
- (3) However, employees can, by agreement, deviate from the provisions of subsections 1 and 2 regarding the allocation of seats among Finnish companies. Wherever possible, the representation of all Finnish participating companies and groups of employees shall be secured by agreement.

Section 8 – *Election of members of special negotiating bodies in Finland*

Employees employed by an SE in Finland have the right to select a representative to the special negotiating body by agreement or election. If employees cannot reach agreement concerning the procedure, the occupational safety delegates representing the greatest number of workers and salaried employees shall jointly arrange an election or other selection procedure in such a way that all employees have the right to participate therein.

Chapter 3 – Negotiations on employee involvement

Section 9 – *Objective of negotiations*

The special negotiating body and the competent organs of the participating companies shall determine, by written agreement, arrangements for the involvement of employees in the SE. To this end, the arrangement of employee involvement shall be negotiated in a spirit of cooperation with a view to reaching agreement.

Section 10 – *The special negotiating body's right to information*

The competent organs of the participating companies shall inform the special negotiating body of the plan for establishing the SE and the progress being made, up to the point when the SE is registered.

Section 11 – *The special negotiating body's decision-taking rules*

- (1) Subject to section 13, the special negotiating body shall take decisions by an absolute majority of its members, provided that such a majority also represents an absolute majority of the employees. Each member shall have one vote.
- (2) However, should the agreement to be negotiated on employee participation mean a reduction in participation rights of employees, the approval of the agreement will require at least the votes of two thirds of those members of the special negotiating body who represent at least two thirds of the employees, including the votes of members representing employees who are employed in at least two Member States. The qualified majority referred to above is,

however, only required if employee participation covers at least 25 per cent of the overall number of employees of participating companies in the case of an SE established by way of merger, or if employee participation covers at least 50 per cent of the overall number of employees of participating companies in the case of an SE established by way of creating a holding company or forming a subsidiary. A reduction in participation rights of employees means that the proportion of members of SE organs referred to in section 3(11) is lower than the highest proportion existing within the participating companies.

Section 12 – *Commencement and duration of negotiations*

- (1) Negotiations shall commence as soon as the special negotiating body is established and may continue up to six months thereafter.
- (2) However, the parties may decide to extend negotiations beyond the period referred to in subsection 1, up to a total of one year from the establishment of the special negotiating body.

Section 13 – *Decision to terminate or not to commence negotiations*

- (1) The special negotiating body may decide not to commence negotiations or to terminate negotiations and apply the rules on informing and consulting employees in those Member States where the SE has employees. Such a decision will suspend the negotiation procedure referred to in this Chapter, in which case none of the provisions of Chapter 5 of this Act will apply.
- (2) A decision not to commence or to terminate negotiations requires at least a two thirds majority of the votes representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States.
- (3) In the case of an SE established by way of transformation, this section does not apply if there has been employee participation in the company to be transformed.

Section 14 – *Experts*

For the purpose of the negotiations, the special negotiating body can request experts of its choice, for example representatives of appropriate Community-level trade union organizations, to assist it with its work. Such experts can be present at negotiation meetings in an advisory capacity at the request of the special negotiating body, where appropriate to promote coherence and consistency at a Community level.

Section 15 – *Reconvening the special negotiating body*

The special negotiating body shall be reconvened on the written request of at least 10 per cent of the employees or employees' representatives of the SE, its subsidiaries and establishments, at the earliest two years after the decision referred to in section 13(1), unless the parties agree to negotiations being

recommended sooner. If the special negotiating body decides to recommence negotiations with the management but no agreement is reached as a result of those negotiations, none of the provisions of Chapter 5 of this Act shall apply.

Chapter 4 – Agreement on employee involvement

Section 16 – Content of the agreement

- (1) Without prejudice to the autonomy of the parties, and subject to section 17, the written agreement between the competent organs of the participating companies and the special negotiating body shall specify:
 - 1) the scope of the agreement;
 - 2) the composition, number of members and allocation of seats on the representative body of employees, which is the partner of the SE's competent organ, in connection with arrangements for the information and consultation of the employees of the SE and its subsidiaries and establishments;
 - 3) the functions of the representative body and the procedure to be followed for informing and consulting it;
 - 4) the frequency of meetings of the representative body;
 - 5) the financial and material resources to be allocated to the representative body;
 - 6) if, during negotiations, the parties decide to adopt one or more information and consultation procedures instead of establishing a representative body, the arrangements for implementing those procedures;
 - 7) if, during negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including the number of members in the SE's administrative or supervisory organ which the employees will be entitled to elect or appoint, or the appointment of which the employees will be entitled to recommend or oppose;
 - 8) the procedures as to how the employees can elect or appoint the members of the SE's administrative organs, or recommend or oppose their appointment, and the rights of these members;
 - 9) the date of entry into force of the agreement and its duration, cases where the agreement should be renegotiated and the procedure for its renegotiation.
- (2) The agreement shall not, unless provision is made otherwise therein, be subject to the standard rules referred to in Chapter 5 of this Act.

Section 17 – Prohibition on reducing employee involvement in a transformation situation

In the case of an SE established by means of transformation, the agreement shall provide for employee involvement which is, in all respects, at least at the same level as that existing within the company to be transformed into an SE.

Chapter 5 – Standard rules regarding the arrangement of employee involvement

Section 18 – *Application of standard rules*

- (1) The provisions of this Chapter shall apply from the date of the registration of the SE where either:
 - 1) the parties so agree, or
 - 2) an agreement on employee involvement has not been concluded by the deadline laid down in section 12 and the competent organ of each of the participating companies decides to accept the application of the standard rules and so to continue with its registration of the SE, and the special negotiating body has not taken the decision referred to in section 13(1) not to commence negotiations or to terminate them.
- (2) However, the provisions laid down in sections 28-30 regarding employee participation shall apply:
 - 1) in the case of an SE established by transformation, only if the rules relating to employee participation were applied in the company transformed into the SE;
 - 2) in the case of an SE established by merger, only if
 - a) before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering at least 25 per cent of the total number of employees in all the participating companies, or
 - b) before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering less than 25 per cent of the total number of employees in all the participating companies and if the special negotiating body so decides;
or
 - 3) in the case of an SE established by setting up a holding company or establishing a subsidiary, only if
 - a) before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering at least 50 per cent of the total number of employees in all the participating companies, or
 - b) before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering less

than 50 per cent of the total number of employees in all participating companies and if the special negotiating body so decides.

Section 19 – *Choosing the form of employee participation*

- (1) If there is more than one form of participation within the various participating companies, the special negotiating body shall decide which of those forms will be established in the SE. If the special negotiating body does not take a decision on the form of employee participation, this shall be decided on by the participating companies.
- (2) The special negotiating body shall inform the competent organs of the participating companies of any decisions taken pursuant to subsection 1.

Section 20 – *Formation of the representative body*

- (1) The representative body shall be composed of employees of the SE and its subsidiaries and establishments elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.
- (2) The members of the representative body shall be elected or appointed in proportion to the number of employees employed in each Member State by the participating companies and concerned subsidiaries and establishments, by allocating for each Member State one seat per amount of employees employed in that Member State equal to 10 per cent, or part thereof, of the number of employees employed by the participating companies and concerned subsidiaries and establishments in all Member States.
- (3) If the number of seats of the representative body allocated among Finnish participating companies is less than or equal to the number of participating companies, the seats shall be allocated among Finnish companies one at a time by decreasing order according to the number of employees employed by them. If the number of seats allocated to Finnish participating companies on the representative body exceeds the number of participating companies, one seat shall first be allocated to each Finnish company, after which the remaining seats shall be allocated among the companies in proportion to the number of employees employed by them. However, employees can, by agreement, deviate from what is referred to above. Wherever possible, the representation of all Finnish participating companies and groups of employees shall be secured by agreement.
- (4) Employees employed in Finland have the right to select their representatives on the representative body by agreement or election. If the employees cannot reach agreement concerning the procedure to be followed, the occupational safety delegates representing the greatest number of hourly-paid and salaried employees shall jointly arrange an election or other selection procedure in such a way that all employees have the right to participate therein.

- (5) The competent organ of the SE shall be informed of the composition of the representative body. The representative body shall adopt rules of procedure. The representative body can elect a working committee from its number, comprising at most three members. The representative body or working committee can be assisted by experts of their choice.

Section 21 – *Compliance with changes to an SE*

Unless otherwise agreed, the representative body shall ensure annually whether any changes have occurred within the SE, its subsidiaries or establishments that would necessitate changing the composition of the representative body.

Section 22 – *Agreement negotiations*

- (1) Four years after the representative body is established, it shall examine whether to commence negotiations for concluding the agreement referred to in Chapter 4 and in section 18 of this Act or to continue to apply the provisions of this Chapter.
- (2) If a decision is taken to negotiate an agreement according to Chapters 3 and 4, the provisions laid down above regarding the special negotiating body shall apply to the arrangement of employee involvement, as appropriate. Where no agreement has been concluded by the deadline for ending negotiations, the arrangements initially adopted regarding employee involvement in accordance with the standard rules shall continue to apply.

Section 23 – *The competence of the representative body*

The representative body is competent to deal with matters concerning the SE itself or its subsidiary or establishment situated in another Member State, and matters exceeding the powers of the decision-making organs in a single Member State.

Section 24 – *The representative body's right to be informed and consulted*

- (1) The representative body has the right to be informed and consulted on the progress of the business of the SE and its prospects, based on regular reports drawn up by the competent organ, and, for this purpose, to meet with the competent organ of the SE at least once a year. The local managements shall also be given the information mentioned above.
- (2) The competent organ of the SE shall provide the representative body with the agenda for meetings of the administrative, management and supervisory organs, and with copies of all documents submitted to the general meeting of shareholders.
- (3) The meetings referred to above in subsection 1 shall deal with the following matters in particular: the SE's structure, economic and financial situation, the probable development of the business and of production and sales, the

employment situation and probable trend, investments, any significant organizational changes, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

Section 25 – Provision of information on the impact of exceptional circumstances

- (1) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, transfers or the closure of establishments or undertakings or collective redundancies, the representative body has the right to be informed. The representative body or, where it so decides, in particular for reasons of urgency, the working committee, has the right to meet with the competent organ of the SE or any more appropriate level of management within the SE having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests.
- (2) Where the competent organ decides not to act in accordance with the opinion expressed by the representative body, this body has the right to a further meeting with the competent organ of the SE with a view to seeking agreement.
- (3) In the case of a meeting organized with a working committee, those members of the representative body who represent employees who are directly affected by the measures in question also have the right to participate.
- (4) The meetings referred to above do not affect the rights of the SE's competent organ.

Section 26 – Meetings of the members of the representative body and informing employees' representatives

- (1) Before any meeting with the competent organ of the SE, the representative body or the working committee, where necessary enlarged in accordance with section 25(3), is entitled to meet without the representatives of the SE's competent organ being present.
- (2) Without prejudice to the provisions laid down in section 31, the members of the representative body shall inform the representatives of the employees of the SE and of its subsidiaries and establishments of the content and outcome of the information and consultation procedures.

Section 27 – Right to time off for training and responsibility for costs

- (1) Insofar as this is necessary for the fulfilment of their tasks, the members of the representative body are entitled to time off for training without loss of earnings.
- (2) The costs of the representative body shall be borne by the SE, which shall provide the members of the representative body with the financial and material

resources needed to enable them to perform their duties in an appropriate manner.

- (3) The SE shall bear the cost of organizing meetings and providing interpretation facilities, the accommodation and travelling expenses of members of the representative body and working committee and the reasonable cost of experts, unless otherwise agreed.

Section 28 – *Employees' participation rights*

- (1) Where an SE is established by transformation, the provisions concerning employees' participation shall continue to apply to the SE.
- (2) Where an SE is established by other means, the body representing the employees of the SE, its subsidiaries and establishments has the right to elect or appoint a specific number of members of the SE's administrative or supervisory organ equivalent to the highest employee participation rate in force in the participating companies concerned before registration of the SE, or to recommend or oppose this number of members.
- (3) If there was no employee participation in any of the participating companies before registration of the SE, the latter is not required to arrange it.

Section 29 – *Allocation of seats among members representing employees*

- (1) The representative body shall decide on the allocation of seats within the administrative or supervisory organ among the members representing the employees from the various Member States, or on the way in which the SE's employees can recommend or oppose the appointment of the members of these organs according to the proportion of the SE's employees in each Member State. If the employees of one or more Member States are not covered by this proportional criterion, the representative body shall appoint a member from one of those Member States, in the first place from the Member State of the SE's registered office.
- (2) An SE's employees employed in Finland have the right to appoint their representatives to the administrative or supervisory organ by agreement or election. If the employees cannot reach agreement concerning the procedure to be followed, the occupational safety delegates representing the greatest number of workers and salaried employees shall jointly arrange an election or other selection procedure in such a way that all employees have the right to participate therein.

Section 30 – *The rights and obligations of members representing employees*

- (1) Members that the representative body has elected, appointed or recommended for the organ of the SE shall be full members of the organ, with the same rights and obligations as the members representing the shareholders, including the right to vote.

- (2) However, a member of an organ referred to in subsection 1 is not authorized to handle questions relating to a collective agreement or industrial action or any other questions where the primary interest of employees may be in conflict with the interest of the SE.

Chapter 6 – Miscellaneous provisions

Section 31 – Confidentiality obligation

The members of the special negotiating body or representative body and the experts who assist them are not authorized to disclose any information about business and trade secrets given to them in confidence, the dissemination of which is likely to be prejudicial to the company, its business or contractual partners, to employees or employees' representatives other than those whom the information concerns. The same applies to employees' representatives and experts in connection with information and consultation procedures. The confidentiality obligation shall continue to apply even after expiry of the term of office.

Section 32 – Derogation from the obligation to provide information

The administrative or supervisory organ of an SE or participating company is not obliged to disclose information where such a disclosure is prevented for particularly weighty reasons that would harm the production or financing of the SE or participating company or its subsidiaries and establishments and which could not have been envisaged beforehand. This information shall, however, be disclosed without delay once the grounds for the derogation from the obligation to provide information no longer exist. At the same time, the grounds for the procedure for derogation shall be clarified.

Section 33 – Protection for employees' representatives

The provisions of Chapter 7(10) of the Employment Contracts Act (55/2001) concerning the termination of the employment contract of a shop steward or an elected representative apply to the protection against termination for members of special negotiating bodies and representative bodies, employees' representatives in connection with information and consultation procedures and members representing employees belonging to the supervisory or administrative organ of an SE, where these are employees of an SE, its subsidiaries or establishments or employees of a participating company working in Finland.

Section 34 – Release from work, compensation and responsibility for costs

An employer shall release employees' representatives referred to in section 33 from normal work for such time as they require for participating in the meetings of a special negotiating body or representative body or in an information and consultation procedure, in order to negotiate the arrangement of employee involvement or to participate in the meetings of the SE's

administrative or supervisory organs and for the directly related joint preparation of employees' representatives for the procedures referred to. Any consequent loss of earnings caused thereby shall be compensated. Any other release from work and compensation for loss of earnings shall in each case be agreed between the relevant employees' representative and employer. Participating companies are responsible for the costs of the functioning and negotiations of the special negotiating body, including the reasonable cost of experts, in order for the special negotiating body to perform its tasks in an appropriate manner.

Section 35 – *International group co-operation*

- (1) Should the SE be a Community-scale undertaking or a controlling undertaking of a Community-scale group of undertakings within the scope of the provisions laid down in the Act on Co-operation within Undertakings (725/1978) regarding international group co-operation, the provisions of that Act will not apply to the arrangement of employee involvement in an SE or its subsidiary.
- (2) If, however, the special negotiating body decides, pursuant to section 13(1), not to commence negotiations for the arrangement of employee involvement or to terminate the negotiations, the provisions laid down in the Act on Co-operation within Undertakings regarding international group co-operation shall apply.

Section 36 – *Misuse of the SE arrangement*

If a significant change is implemented in an SE or in a subsidiary or establishment of an SE within a year following the SE's registration which would have meant more extensive employee involvement upon establishment of the SE, renegotiations shall be held on the arrangement of employee involvement. These shall be held in the order which should have been followed if the above-mentioned change had been implemented before the registration of the SE.

Section 37 – *Supervision*

Supervision of compliance with this Act is exercised by the Ministry of Labour.

Section 38 – *Conditional imposition of a fine*

A County Government can, upon application, order an SE or participating company to fulfil the obligations pursuant to this Act or the agreement referred to in section 16 under penalty of a fine. The request for conditional imposition of a fine is made by the Ministry of Labour.

Section 39 – *Penal provisions*

- (1) A person belonging to the management of an SE or participating company, the employer, or the representative of either, who intentionally or through carelessness fails to observe the provisions of section 24 or 25 of this Act, or section 34(1) on matters other than payment liability, or who substantially fails to comply with the terms of the agreement referred to in section 16, shall be sentenced to a fine for *violation of the obligation to arrange employee involvement*. How liability is shared between the employer and the employer's representatives is determined according to the principles laid down in Chapter 47(7) of the Penal Code (39/1889).
- (2) Punishment for violation of the right of employees to elect their representatives to the special negotiating body as prescribed in section 8 of this Act shall be imposed in accordance with Chapter 47(5) of the Penal Code. Punishment for violation of the protection of employees' representatives as prescribed in section 33 shall be imposed in accordance with Chapter 47(4) of the Penal Code. Punishment for violation of the confidentiality obligation as prescribed in section 31 shall be imposed in accordance with Chapter 38(2)(2) of the Penal Code, unless more severe punishment for the act than is provided in Chapter 38(1) of the Penal Code is prescribed elsewhere.

Section 40 – *Entry into force*

This Act enters into force on 8 October 2004.